

REMARKS/ARGUMENTS

After entry of this amendment, claims 1-21 are pending in the application.

Drawing Issues

Formal drawing sheets are included for the Examiner's review and are believed to overcome the Examiner's objection to the drawings.

Abstract Issues

A corrected abstract has been included for the Examiner's review. The Abstract is also included as a separate sheet included at the end of this response.

Section 112 Issues

Claims 3-9, 11-12, and 17 were initially rejected under 35 USC §112. Claim 3 is believed to be correct as written, since it recites "a telephony network" rather than "said telephony network" as was stated by the Office Action. Claim 4 has been amended to be dependent on claim 3. Therefore, claim 3 provides the antecedent basis for "said telephony network" in claim 4. Claim 12 has been amended to be dependent upon claim 11 and therefore the antecedent basis objection is overcome. Claim 17 has been amended to recite "said encrypted message" so as to refer to the encrypted message in claim 15.

The Examiner noted that two claim 11's were presented. For the sake of clarity, the first claim 11 has been canceled and re-presented as claim 21. This amendment is being made for the sake of clarity so that there will be no confusion regarding the claims. Therefore, no disclaimer of subject matter is intended by this amendment.

Section 103 Issues

Claims 1-5, 9-20 were rejected under 35 USC §103(a) as being unpatentable over Carswell (5,365,591) in view of Atkinson (5,892,904).

The MPEP notes that an obviousness rejection cannot be made when the proposed combination of references would change the principle of operation of the cited reference. See, MPEP, Seventh Edition, Revision 1, February 2000, section 2143.02 at page 2100-99, citing In re Ratti, 123 USPQ 349 (CCPA 1959). In re Ratti also stands for the rule that the combination of references must not require substantial reconstruction or redesign of the references to arrive at the claimed invention. In the In re Ratti case, the Court of Customs and Patent Appeals reversed the rejection of the claims and emphasized that the modification of the prior art would be too substantial to have been obvious:

"We hold . . . that the combination of Jepson with Chinnery et al. is not a proper ground for rejection of the claims here on appeal. This suggested combination of references would require a substantial reconstruction and redesign of the elements shown in Chinnery et al. as well as a change in the basic principles under which the Chinnery et al construction was designed to operate." In re Ratti, 123 USPQ 349, 352 (C.C.P.A 1959).

"Once [applicant Ratti] had taught how this could be done, the redesign may, by hindsight, seem to be obvious to one having ordinary skills in the shaft sealing art. However, when viewed as of the time [applicant's] invention was made, and without the benefit of [applicant's] disclosure, we find nothing in the art of record which suggests appellants novel oil seal" Id. at 352.

In the present application, the Office Action has attempted to combine the Atkinson patent with the Carswell patent. Clearly, the combination of these two patents would result in a substantial reconstruction of the Atkinson system. Namely, it would require that a two processor system be implemented where Atkinson only contemplated a single processor system. This required doubling of the hardware involved in the Atkinson system is the type of substantial reconstruction that is too extreme. It not only requires a substantial reconstruction of Atkinson but also changes the basic principles under which Atkinson was intended to operate. Namely, Atkinson would be required to send its authenticated data to another processor for processing. Buswork and other circuitry would be required as well to coordinate the exchange of data from the first and second processor. Thus, clearly, the changes mandated by the combination of

Carswell and Atkinson are so extreme as to not make obvious Applicant's claimed invention as shown in claim 1. Therefore, for at least these reasons, claim 1 is believed to be non-obvious and therefore allowable.

Claims 2-14 and 21 are dependent upon claim 1 and therefore are allowable for at least the same reasons that claim 1 is allowable.

Claim 15 was rejected under the same analysis that the Office Action used for claim 1. Therefore, the same response that applies to claim 1 also applies to claim 15.

Claims 16-20 are dependent upon claim 15. Therefore, they are allowable for at least the same reasons that claim 15 is allowable.

Request for Affidavit

In rejecting claims 6-8, the Office Action took Official Notice in making the assertion that it is old and well-known practice to couple a provisioning server, a billing host, and a customer service representative center with a cable telephony network.

Since cable telephony in this day and age is not a widely established technology, this assertion is believed to be inapplicable. This is especially true since the application was filed in January 2001 and cable telephony was even less established then than it is today.

Therefore, it is respectfully requested that since Official Notice is being asserted that an affidavit of the Examiner under 37 CFR 1.104 be prepared and submitted by the Examiner.

CONCLUSION

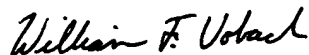
In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Appl. No. 09/890,179
Amdt. dated May 11, 2005
Reply to Office Action of February 7, 2005

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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Attachments
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Amendments to the Drawings:

The attached sheets of drawings includes legible text to replace the original drawings. These corrected sheets, which include Fig. 2B replace the original sheets including Fig. 2B.

Attachment: Replacement Sheets

Fig. 1

Fig. 2A

Fig. 2B